BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

CYNTHIA L. BARLOW Claimant)
VS.) Docket No. 160,803
CANTEEN CORPORATION Respondent)))
AND	
CONTINENTAL NATIONAL AMERICAN GROUP Insurance Carrier	

ORDER

Respondent appeals from a Preliminary Hearing Order of October 11, 1994, wherein Administrative Law Judge Nelsonna Potts Barnes granted claimant benefits in the form of post-award medical care with Dr. Stacy Peterson, temporary total disability benefits, if claimant is taken off work by the authorized treating physician, and reasonable attorney fees in the amount of \$400.00 pursuant to K.S.A. 44-536.

ISSUES

Respondent contends the Administrative Law Judge erred in failing to follow procedures of K.S.A. 44-528 in granting claimant benefits, in appointing Dr. Peterson as the authorized treating physician, and in admitting medical testimony into the record without the testimony of the physician creating said medical records.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board finds as follows:

K.S.A. 44-534a makes applicable to both claimant and respondent the specific criteria and procedures required to proceed to preliminary hearing for the purpose of

IT IS SO ODDEDED

medical treatment and payment of temporary total disability compensation pre- and post-award. The original Award in this matter was written December 9, 1992. In that Award the claimant was granted future medical care upon proper application to the Administrative Law Judge.

Respondent's contention that the Administrative Law Judge was in violation of K.S.A. 44-528 is misplaced. No motion under K.S.A. 44-528 was filed in this matter. Instead, claimant filed an E-3 requesting benefits in the form of medical treatment and the authorization of Dr. Stacy Peterson.

K.S.A. 44-534a allows appeals from a preliminary hearing for the specific jurisdictional issues regarding whether claimant suffered accidental injury; whether the injury arose out of and in the course of the employee's employment; whether notice is given or claim timely made; or whether certain defenses apply. None of the above issues exist in this circumstance. K.S.A. 44-551 limits the rights of a party to appeal from a preliminary order to situations where it is alleged that the Administrative Law Judge exceeded the Administrative Law Judge's jurisdiction in granting or denying the relief requested at the preliminary hearing.

In this situation the Administrative Law Judge was fully empowered to grant post-award medical care and to appoint the authorized treating physician for said care. The Administrative Law Judge further has the jurisdiction to grant temporary total disability benefits if the claimant is taken off work by the authorized treating physician. The Administrative Law Judge is allowed under K.S.A. 44-536 to grant post-award attorney fees to the claimant if the proper criteria is met.

As it has not been shown the Administrative Law Judge exceeded her jurisdiction in ordering benefits for the claimant, the Appeals Board finds that it does not have the jurisdiction to entertain this appeal from a preliminary order.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the October 11, 1994, Order of Administrative Law Judge Nelsonna Potts Barnes remains in full force and effect.

II IS SO ORDERED.	
Dated this day of December, 1994.	
BOARD MEMBER	
BOARD MEMBER	_

BOARD MEMBER

c: James Zongker, Attorney at Law, Wichita, KS Anton C. Andersen, Attorney at Law, Kansas City, KS Nelsonna Potts Barnes, Administrative Law Judge George Gomez, Director